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"The AT&T/T-Mobile Merger"

Before the Senate Committee on the Judiciary,
Subcommittee on Antitrust, Competition Policy, and Consumer Rights

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Good morning, Chairman Kohl, Ranking Member Lee, and Members of the Subcommittee. I am Larry Cohen, President of the Communications Workers of America (CWA). CWA represents more than 700,000 workers in the communications, media, airline, and manufacturing industries as well as the public sector. Most important, for purposes of today's hearing, we represent approximately 43,000 AT&T wireless employees. Therefore, the subject of this hearing – the AT&T/T-Mobile merger – is of intense interest to our members, and I very much appreciate the opportunity to share our views with you today.

We have studied this transaction carefully and reached the following conclusion: AT&T's acquisition of T-Mobile will be good for broadband deployment, good for consumers, good for jobs, good for workers' rights, and good for rural citizens. In short, we strongly believe that this merger will be good for America.

We understand that this transaction will be subject to thorough regulatory oversight, and such review is entirely appropriate. We also appreciate the role of Congress and, in particular, this Subcommittee in monitoring both the wireless marketplace in general and this specific transaction. At the end of these inquiries, however, we believe that three critical points will become apparent: (1) the AT&T/T-Mobile merger will accelerate high-speed broadband deployment; (2) the transaction will positively impact consumers; and (3) the merger will benefit workers. As a result, we believe that the merger should be expeditiously approved.

I. The AT&T/T-Mobile Merger Will Accelerate High-Speed Broadband Deployment

The title of this hearing asks whether Humpty Dumpty is being put back together again. The previous AT&T was a legal monopoly with the exclusive ability to provide every form of communications to the vast majority of Americans. Today's AT&T, by contrast, faces increasing competition in every segment of communications from an increasing plethora of providers: Rural and midsize phone companies, numerous wireless competitors, cable operators, and even satellite operators. The reality is that in today's competitive market no company can put together the kind of power once wielded by the prior AT&T.

What is true, however, is that the AT&T/T-Mobile merger will enable AT&T to put together a high-speed broadband network that can provide 4G LTE service (which can deliver download speeds of 10 megabits per second) to 97 percent of the population of the United States within six years. This is especially noteworthy because only 20 percent of broadband subscribers in the United States currently connect to the Internet at such speeds.

In recent years, the Obama Administration and the Congress have rightfully made broadband deployment a top national priority. Today, the United States ranks only 15th in the world in broadband adoption and 25th in average Internet connection speeds. Indeed, Romanians currently enjoy average Internet speeds that are more than six times those experienced by Americans. This situation is entirely unacceptable. Just as our world-class interstate highway system fueled our nation's economic growth in the last century, we need to accelerate our deployment of high-speed broadband networks to maintain our international competitiveness and create jobs in this century.

Four years ago, CWA launched our Speed Matters campaign to highlight the fact that high-speed broadband is necessary to enable the current wave of technological innovation to reach all Americans and improve their quality of life. Telemedicine, distance learning, and smart grids, to give just a few examples, have enormous potential to improve health care, education, and energy conservation, but they will remain out of the grasp of tens of millions of Americans unless we are able to accelerate the development of high-speed wired and wireless broadband networks.

The AT&T/T-Mobile merger marks a critical step toward the goal of bringing high-speed broadband service into all American homes. As a result of its acquisition of T-Mobile, AT&T will be able to offer 4G LTE service to 55 million more Americans than otherwise would be the case. Its 4G LTE network will be able to cover 97 percent of all Americans instead of just 80 percent. This increased coverage is especially important in light of the fact that T-Mobile currently has no plans (or even a clear path) to offer real 4G service to any of its 34 million subscribers. Unfortunately, T-Mobile simply lacks both the spectrum and capital to build a 4G network. By contrast, because AT&T and T-Mobile use the same technology, it will be easy to integrate the two companies' networks and for existing T-Mobile customers to enjoy the benefits of 4G service.

While consumers throughout the United States will benefit from AT&T's expanded 4G LTE broadband network, the effects will be especially pronounced in rural America. Those living in rural areas are currently on the wrong side of a digital divide. For example, a report last year by the Pew Research Center's Internet & American Life Project found that while 70 percent of Americans in non-rural areas have broadband in their homes, the figure is only 50 percent among rural Americans. And one key reason for this gap is that high-speed broadband networks cover a significantly greater percentage of urban areas than rural areas.

In order to create jobs and sustainable communities in rural America and reverse the trend of depopulation that is plaguing many small towns as younger residents move to larger cities in search of economic opportunities, it is critical that we close the digital divide. The AT&T/T-Mobile merger will help do just that. The 55 million additional people to be covered by AT&T's 4G LTE network as a result of the merger are generally located in rural America. <u>Indeed, the additional areas that will be covered by AT&T's 4G LTE network comprise an area equivalent to more than one-third of the land mass of the 48 contiguous states</u>.

Finally, especially in light of our nation's current fiscal condition, it is worth noting that this dramatic expansion of high-speed broadband availability in rural areas will occur at <u>no</u> cost to taxpayers. The federal government already spends billions of dollars a year in universal service to ensure that everyone has access to basic service. And the FCC is considering an expansion of this subsidy program. The AT&T/T-Mobile merger will ensure dramatically increased broadband coverage without public subsidies, thus decreasing the degree to which the program will need to grow. To be sure, government can, and should, confirm merger-related broadband and speed commitments as well as establish concrete timetables for deployments.

II. The Merger Will Benefit Consumers

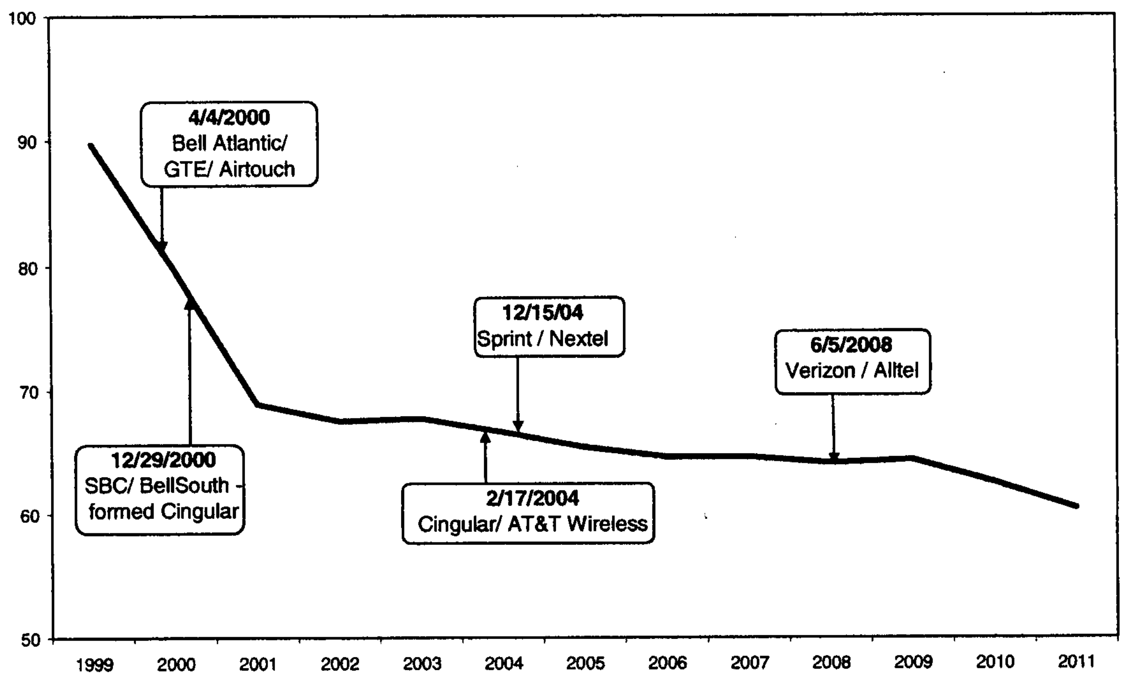
Apart from the expanded 4G LTE high-speed broadband network that will result from the merger, we believe that AT&T's acquisition of T-Mobile will positively impact consumers in other ways.

In particular, the merger will improve the quality of service received by AT&T and T-Mobile customers. AT&T's acquisition of T-Mobile will result in a company with increased cell tower density, broader network infrastructure, and added spectrum. This combination of factors will bring tangible benefits to AT&T's customers on a daily basis: fewer dropped calls, decreased network congestion, and increased broadband speeds.

Integrating T-Mobile cell sites into AT&T's network, for example, will effectively double the amount of traffic that can be carried using existing spectrum in the areas covered by such sites. Furthermore, AT&T, after the transaction, will be able to eliminate redundant control channels, thus freeing up more spectrum to carry additional traffic. It will also be able to group spectrum channels into larger pools, thus making it more likely that a subscriber will be able to find an open channel and allowing the companies' integrated network to carry more traffic with the same combined spectrum than the two companies could serve independently. Finally, AT&T will be able to make more efficient use of spectrum that is currently underutilized by one of the companies in certain locations.

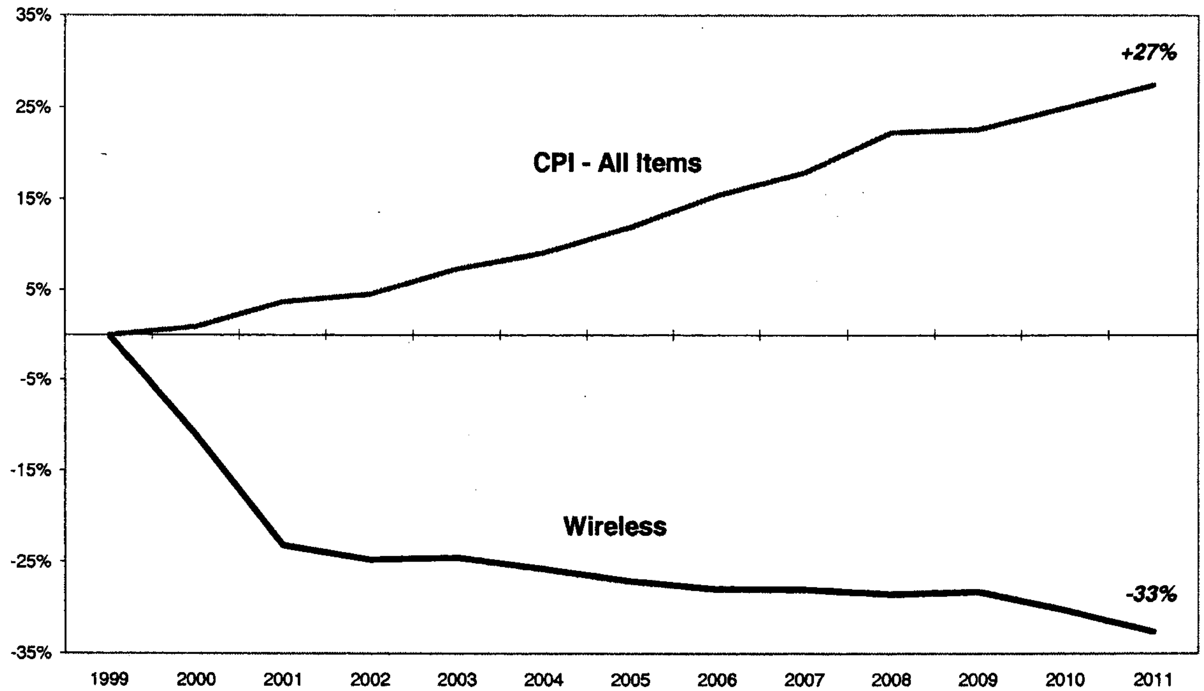
To be sure, some contend that the merger will increase consolidation in the wireless industry, a development they maintain will harm consumers through higher prices and an insufficient range of choices. The facts, however, do not support this argument. Over the course of the last twelve years, we have witnessed numerous significant mergers in the wireless industry: Bell Atlantic-GTE-Airtouch in 2000; SBC Wireless-BellSouth Wireless in 2000; Cingular-AT&T Wireless in 2004; Sprint-Nextel in 2004; Verizon-Alltel in 2008; and AT&T-Centennial in 2009, just to name a few. And, how have these transactions impacted prices? As demonstrated in the following chart, prices paid by consumers for wireless service have continued to fall following such mergers.

Wireless Telephone Prices Decline as Wireless Carriers Merge
Consumer Price Index - Wireless Services, 1999-2011



According to the Bureau of Labor Statistics, from 1999 to 2011, inflation in the United States rose by 27 percent. Yet, over that same time period, wireless prices (including both voice and data) have actually dropped by 33 percent as shown in the following chart.

Wireless Prices Decline 33% While General Inflation Increases 27%
(Wireless prices include voice and data)
1999 - 2011



Indeed, to give just one specific example of the dramatic price declines in the wireless industry, according to the most recent figures supplied by the FCC, the average revenue per text message received by carriers decreased by more than 70 percent from 2005 to 2008.

There are a couple of reasons that mergers in the wireless industry have led to decreased rather than increased prices. First, such mergers often produce efficiencies and synergies that allow companies to compete more effectively in the marketplace. For example, if it does not acquire T-Mobile, AT&T will face increasing capacity constraints, and this spectrum shortage will decrease the company's incentive to attract new customers through reduced prices. The merger, by contrast, will increase AT&T's incentive to compete for new customers, and the network synergies resulting from the merger will give it a greater capacity to decrease prices. As one industry analyst has stated, "AT&T could use its scale and magnitude of synergy realization to further reduce prices against Verizon and narrow the pricing gap to Sprint, especially for emerging 4G services and rates charged to connected-device users."[1]

Second, and perhaps more important, the wireless industry is intensely competitive and will remain so after the AT&T/T-Mobile merger. In 23 of the top 25 U.S. markets, for instance, there are currently five or more facilities-based wireless competitors, including Verizon, Sprint, low-cost no-contract carriers like MetroPCS and Leap, and regional carriers such as US Cellular and Cellular South that offer nationwide service plans. Indeed, the FCC estimated just last year that more than 70 percent of Americans live in areas served by five or more facilities-based mobile wireless service providers and more than 90 percent of Americans reside in areas served by four or more such providers. There are also an increasing number Mobile Virtual Network Operators (MVNOs or resellers), and these competitors are growing rapidly. For example, one such MVNO, TracFone, has increased its subscriber base by approximately 30 percent just since the end of 2009.

Current and emerging wholesale providers that are constructing advanced wireless networks provide additional competition. Clearwire, for example, maintains that it is the largest spectrum holder in the nation, and its service is currently resold under the brands of Sprint and many cable operators. In fact, Sprint has a majority (54 percent) economic interest in Clearwire. Moreover, LightSquared expects to cover 260 million people by 2015 with its wholesale-only integrated wireless broadband and satellite network.

The intense competition that characterizes the wireless market is perhaps best illustrated by the number of consumers that change carriers. Specifically, an estimated 25 percent of customers in the United States switch to different wireless service providers <u>each year</u>.[2] Companies in the marketplace are therefore in a constant struggle both to retain their current

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[1] Citigroup Global Markets, Telconomy 2011 – Wireless Update, March 21, 2011.

[2] FCC, In the Matter of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 09-66, May 20, 2010 (rel), para. 248.

customers and to attract new ones, an imperative that is driving them to lower prices, offer new service plans, applications, and devices, and make tens of billions of dollars in capital investments to improve the quality of their service.

In short, competition in the wireless industry is and will remain vibrant after the merger because of the numerous competitors that will remain in the market and because the dynamics of the marketplace discourage anti-competitive coordination or collusion. The wireless industry is constantly innovating, and there is a strong incentive for a company to be the leader in rolling out a new product or service. In addition, companies do not just compete on a single variable – price – but rather distinguish themselves with respect to a number of elements, including operating platforms, speed, and devices, thus making coordination or collusion far more difficult. Moreover, major players in the industry are under constant threat by the prospect of new entrants or the rapid growth of smaller rivals. MetroPCS, for example, has increased its subscriber base by approximately 17 times over the past nine years (from about 500,000 in 2002 to approximately 8.9 million today), and Leap's subscriber base has increased by 274 percent in the last seven years, growing from about 1.47 million to 5.5 million customers. Both companies, moreover, have dramatically expanded the coverage of their networks, with MetroPCS now claiming to have a larger footprint than Sprint, and Leap announcing that its network covers 277 million people. All of these factors combine to make the wireless market one that is highly unsusceptible to anti-competitive coordination or collusion according to economic literature and the history of vibrant competition within the industry.

Apart from strong competition within the wireless industry, wireless broadband providers also face competitive pressures from a broad array of sources. Consumers have a number of options when it comes to broadband service. Apart from mobile broadband, they can choose cable, DSL, satellite, or fiber. As each of these technologies develop and improve, the competitive pressures placed on wireless broadband providers increase, thus pushing them to improve their quality of service and constraining their ability to raise prices.

Additionally, before this transaction was proposed, it was clear that Deutsche Telekom was going to sell T-Mobile. Therefore, the real question posed by this transaction is not whether T-Mobile will survive as an independent competitor. Rather, the operative question is whether T-Mobile will be acquired by Sprint or AT&T, and the record clearly indicates that an AT&T/T-Mobile merger will be better for consumers and competition than would a merger between T-Mobile and Sprint.

To begin with, AT&T has the financial resources that are necessary to develop T-Mobile's assets fully. Its credit rating is investment grade, the company has a healthy debt-to-equity ratio, and its net profits are strong. Sprint, by contrast, likely would have significant difficulties in modernizing and growing T-Mobile's assets. The company currently has a BB- non-investment or "junk" credit rating, has a debt-to-equity ratio that is more than twice AT&T's, and has lost billions of dollars over the last three years. Sprint's cash flow and capital expenditures (cap ex) could not support the merger. In 2010, Sprint's cap ex was only 5.9 percent of revenues, compared to typical telecom cap ex in the range of 10 to 15 percent. Over the past six years (2005-2010), Sprint's cap ex declined 74 percent, from $5.6 billion in 2005 to $1.4 billion in 2010. In fact, to enter into a similar deal for T-Mobile, Sprint would have had to borrow tens of billions of dollars to fund the transaction, at least doubling its current $20 billion in long-term debt. While Sprint is currently making incremental progress in digging itself out of the hole it created with the Nextel merger and seems to be on track to becoming a healthy number three competitor, this transaction would have exposed Sprint to a significant challenge. Moreover, Sprint would have far more difficulty integrating T-Mobile assets into its network from a technical standpoint because Sprint would face the challenge of merging four different wireless operating systems that pose significant interoperability problems. AT&T and T-Mobile, by comparison, utilize similar and compatible technologies for their networks. Finally, AT&T has a proven track record of managing acquisitions smoothly and emerging from them with a strengthened company. The story of the Sprint-Nextel merger, on the other hand, has emerged as a cautionary tale for corporate America on the dangers of poorly conceived and managed acquisitions.

During the regulatory review process, we expect the Department of Justice (DoJ) and Federal Communications Commissions (FCC) to analyze thoroughly the competition issues raised by this merger. Consistent with past transactions, this review should focus on local market conditions, and as with recent wireless transactions, it is possible that AT&T will be required to divest assets in certain markets. We do not object to such steps and indeed expect the DoJ and FCC to take appropriate action to protect consumers and safeguard the public interest. However, at the end of the day, we believe, for the reasons outlined above, that the AT&T/T-Mobile merger will benefit consumers, who because of the transaction will enjoy greater access to 4G service, faster Internet connections, better service quality, and a marketplace where prices continue to decrease.

III. The Merger Will Be Good for U.S. Workers

In addition to accelerating broadband deployment and benefiting consumers, we also believe that the AT&T/T-Mobile merger will be good for U.S. workers. As the representative of 43,000 AT&T wireless employees, our foremost responsibility when it comes to this transaction is to ensure that this merger is in the interest of our members and workers in the industry, and we are convinced that it is.

AT&T is the only union wireless company. AT&T's management has worked in partnership with CWA to ensure that past mergers worked to the benefit of AT&T's employees, and this transaction will be no different. Over the past decade, AT&T has expanded through numerous transactions, including those involving Cingular, Dobson, and Centennial. And during that same time, the number of AT&T wireless workers represented by CWA has grown dramatically: from about 9,300 in 2001 to about 43,400 today.

During implementation of the AT&T/T-Mobile merger, CWA will work closely with AT&T to ensure that there will be no involuntary job losses and that any workers adversely affected by the transaction will be able to transition into other similar or better jobs with the company. Indeed, we believe in the long term that AT&T, after the merger, will be in a stronger position to create jobs because it will be better able to expand and extend its business than either AT&T or T-Mobile could have done as separate entities. To give just one example, the expansion of AT&T's 4G LTE network that will result from the merger holds the potential to create thousands of new jobs.

Aside from positively impacting our members who work for AT&T, the merger will also prove to be a boon for T-Mobile employees. When it comes to the subject of workers' rights, the difference between T-Mobile and AT&T is quite striking. While AT&T maintains a policy of true neutrality and allows workers to make their own decisions regarding union representation, T-Mobile is actively hostile to unions and strongly opposes efforts by workers to organize and exercise their basic rights.

AT&T, for example, trains managers not to influence workers' decisions regarding union representation. T-Mobile, on the other hand, ensures that managers act on the company's anti-union policy through the use of anti-union training manuals, job postings and e-mails. The atmosphere for workers at the two companies also differs dramatically. At AT&T, workers are allowed to talk freely about unions, can take union literature without fear, and are not pressured to report any contact with unions to management.

At T-Mobile, however, this is far from the case as workers are subject to widespread anti-union intimidation. T-Mobile managers advise workers not to take union literature, and training classes for employees include anti-union statements. The company also has created a climate of fear through steps such as photographing the license plates of employees seen taking union leaflets, pressuring workers to report contact with union representatives to management, and requiring workers to attend anti-union meetings. As one T-Mobile worker stated earlier this year, "In my training class, it was practically shoved down our throats that T-Mobile does not tolerate unions. . . . When the CWA reps are outside giving out flyers, I am afraid to take one for fear of being tagged a union supporter."[3] Simply put, T-Mobile employees currently work in an environment where they are afraid they will lose their jobs if they attempt to exercise their basic right to organize. As one worker put it, "[I]f I open my mouth and say something positive regarding CWA or organizing, I could be terminated . . . And there wouldn't be any legal protection for me. That's the other thing. If you agree with the company, you have some degree of freedom of speech while you're working. If you do not agree with the company, no, you have no protection whatsoever."[4] And a former T-Mobile employee last year recalled that when working for T-Mobile, "we were called into the manager's office for an anti-union meeting with management reps and told union organizing activities would cost us our jobs."[5]

This atmosphere of intimidation at T-Mobile is particularly effective because of workers' employment status. T-Mobile workers are "at will" employees, a fact of which they are frequently reminded, meaning that they can be legally fired so long as their dismissal would not violate any antidiscrimination laws (e.g., race, gender, age, religion, etc.). AT&T employees, by contrast, are protected by collective bargaining agreements which establish a system of "due process" and regulate the terms under which a worker may be disciplined or discharged.

Once AT&T completes its acquisition of T-Mobile, more than 20,000 T-Mobile employees will benefit from a dramatically improved working environment. In accordance with our collective bargaining agreement, AT&T has publicly committed to maintain a policy of strict neutrality with respect to the organizing of T-Mobile employees after the acquisition, leaving the decision of whether to join a union up to individual employees according to a non-confrontational process sanctioned under the National Labor Relations Act. As a result, just as workers at other companies acquired by AT&T have chosen

[3] Anonymous T-Mobile Worker, Remarks at ITUC meeting, January 20, 2011.

[4] CWA Voices of T-Mobile Workers Project, Interview 1.

[5] http://loweringthebarforus.org/news/entry/t-mobile_workers_blog_we_needed_the_oprion_of_joining_a_union/.

union representation soon thereafter, we believe that in an atmosphere free from fear and intimidation, there is an excellent chance that T-Mobile employees will make this choice as well. And if they do, T-Mobile employees will for the first time have an opportunity to select union representation based on global standards of workers' right to freedom of association and representation.

Indeed, looking at the big picture from the perspective of T-Mobile employees, AT&T's acquisition of T-Mobile is clearly in their interest. Before this transaction was proposed, it was clear that Deutsche Telekom was going to sell T-Mobile. The only real question was whether T-Mobile would be acquired by Sprint or AT&T, and AT&T is by far the better option for T-Mobile employees. For example, in contrast to AT&T's strict neutrality policy with respect to union organizing and positive partnership with CWA, Sprint has a long history of hostility to union organizing and workers' rights. The organizing drive at La Conexion Familiar, a Sprint long-distance service marketed to Latinos, has become legendary. In a show of courage and solidarity, 70 percent of the call center employees joined a petition to the NLRB to hold a union election. In response, Sprint closed the call center. In subsequent proceedings, an NLRB Administrative Law Judge found Sprint guilty of more than 50 violations of the law. During this experience and others, Sprint used a handbook detailing how to maintain a union-free workplace to train managers.

Although at one time there were organized units at Sprint, most of these were organized under previous owners, local telephone carriers such as United Telephone that Sprint acquired in a string of mergers. Sprint's strategy was to isolate them and to wall them off from the long distance and wireless segments of the company so that those divisions would remain union free. Indeed, when Sprint changed its business plan in 2005, it divested these units to Embarq.

There was a successful effort to organize three call centers in North Carolina. The workers persevered in the face of Sprint's relentless anti-union attacks over an eight-year period (1986-1994). Once the unit was organized, Sprint dragged out contract negotiations for another year and a half, using a variety of delaying tactics while trying to decertify the unit even before the contract was signed. Together, these experiences had the effect of freezing workers' interests in forming a union. The workers knew they were likely to lose their jobs if anyone tried to organize.

Furthermore, Sprint had outsourced up to 70 percent of its customer contact workforce to places like the Philippines, India, and Mexico.[6] Sprint is the only U.S. wireless company that outsources network management, and according to one source, a "great part" of the work has been sent abroad.[7] AT&T and its unions, by comparison, recently negotiated the return of 3,000 DSL-related customer service jobs to the United States, and workers at AT&T have a seat at the table when it comes to outsourcing because the topic continues to be the subject of negotiations between management and the union.

In sum, because of T-Mobile's current condition and the choice that Deutsche Telekom made to exit the market, T-Mobile workers now face a fork in the road, and to paraphrase Yogi Berra's famous words, it is in their interest to take it. One path forward is the merger with AT&T, a transaction that will allow them both to join a strong and stable company that is positioned for future growth and to work for an employer that respects the rights of American workers. The other path forward is a merger with Sprint, a transaction that would leave them at the mercy of a less financially robust company that is hostile to union organizing and has a troubling record of outsourcing. We believe that the best choice for T-Mobile's workforce is an obvious one.

IV. Conclusion

CWA believes that AT&T's acquisition of T-Mobile is a win-win-win proposition: it will accelerate broadband deployment, benefit consumers, and

[6] Alena Semuels, "Sprint focused on keeping customers happy so they don't leave," Los Angeles Times, March 5, 2009, http://latimesblogs.lattimes.com/technology/2009/03/sprint-and-cust.html

[7] Gulveen Aulakh, "Ericsson to serve US clients using 'competent' workforce in India," *The Economic Times*, Nov. 26, 2010.

positively impact workers. As a result of the merger, AT&T will be able to build a network that will offer 4G LTE broadband service to 97 percent of Americans, the quality of service received by current AT&T and T-Mobile customers will improve, and more than 20,000 T-Mobile employees will be able to work for a company that respects workers' rights and to enjoy improved working conditions. All of these developments, moreover, will occur within a wireless marketplace that will remain dynamic and fiercely competitive.

For all of these reasons, it is CWA's hope and expectation that, following a thorough regulatory review, the Department of Justice and the Federal Communications Commission will approve AT&T's acquisition of T-Mobile.